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SUPPLEMENTAL TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 130

WILLIA NIUKKANEN, ETC., PETITIONER,

vs.

E. D. McALEXANDER, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 20, 1959

CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

PROCEEDINGS BEFORE IMMIGRATION AND NATURALIZATION SERVICE

UNITED STATES DEPARTMENT OF JUSTICE
Portland 5, Oregon

File No.: A-5 085 301

Transcript of Hearing

Date:	May 11, 1953
Time:	9:50 A.M.
Place:	Portland 5, Oregon
Special Inquiry Officer:	Louis C. Hafferman
Examining Officer:	Howard E. Fenn
Interpreter:	None
Stenographer:	Leona L. Brown
Respondent:	William Albert Mackie
Alien's Representative:	Sidney I. Lezak, Attorney at Law
Language Used:	English

[fol. 12] Examining Officer to Witness:

Q. Will you state what your full and complete name is?
A. Walter Robert Patrick Wilmot.
Q. Have you ever used any other name, Mr. Wilmot?
A. Only in the Communist Party.
Q. What name did you use?
A. W. P. Ayer.
Q. Where do you now reside, Mr. Wilmot?
A. New York City.
Q. Where were you born?
A. Butte, Montana.
Q. Are you a citizen of the United States?
A. I am.

Q. Have you ever been a member of the Communist Party?

A. Yes, I was a member.

Q. Will you state when you joined the Communist Party?

A. In the Summer, late Fall of 1936 or early in 1937. I don't recall exactly.

Q. Where did you join the Communist Party?

A. Portland.

Q. Do you recall who solicited you to join?

A. Kenneth Fitzgerald, mainly.

Q. To what section of the Communist Party did you belong?

A. First I belonged to the so-called Cultural Section, a sort of catch-all of artists, writers, and then I was assigned to the Waterfront Section later, after I became editor of the paper they had here.

[fol. 13] Q. What paper are you referring to?

A. That was the "Labor New Dealer".

Q. How long did you remain a member of the Communist Party?

A. I was expelled in the Summer of 1939, July or August 1939.

Q. Were you active all during this period from the time of joining until your time of expulsion?

A. Very active.

Q. Did you pay dues to the Communist Party?

A. I did, up until about six or seven months before my expulsion. I don't remember how long, and I stopped.

Q. Were you issued a Communist Party membership book or card?

A. Yes.

Q. What did you do with your book or membership card?

A. I carried it with me sometimes and when things were hot I hid it.

Q. What was the ultimate disposition of the card?

A. I believe I tore it up.

Q. During the period of your membership in the Communist Party, did you attend Communist Party meetings?

A. Many.

Q. Where were these meetings held? That is as to city?

A. They were held in Portland, most of the meetings I attended. I believe I went to Seattle and went to some meetings, and Aberdeen. There was one in Centralia. I can't say exactly.

Q. Were these meetings of the Communist Party that you attended following your joining closed meetings? By closed I mean closed to all except Communist Party members?

A. Yes. Those that I term Communist Party meetings, there were no outsiders.

Q. Do you know the respondent in this case, William Albert Mackie?

A. I do.

Q. Under what name did you know him?

A. William Mackie.

Q. Will you state for the record approximately when you first met him?

A. Well, as a Communist I would—

Mr. Lezak: Just a minute. I object to the answer as being not responsive. As I remember, the question is will you state for the record when you first met him.

[fol. 14] Special Inquiry Officer: Objection sustained.

Witness: In the late Summer of 1936 or the early Winter thereabouts, and from that time on many times until I was put out of the Party.

Examining Officer to Witness:

Q. Will you state the circumstances under which you met him, if you recall them?

A. I met him once at the home of Helmi Burns, who was my secretary on the "Labor New Dealer".

Q. Was William Albert Mackie, to your knowledge, a member of the Communist Party?

A. Yes.

Mr. Lezak: Just a moment. I object to the question as calling for a conclusion, and I move to strike the answer.

Special Inquiry Officer: I will overrule your objection on the ground that it is responsive to the question and the witness should have knowledge thereof.

Mr. Lezak: I object on the ground that the question itself calls for a conclusion of the witness based upon - not based upon any foundation of facts which have been laid down.

Examining Officer: This is a question which will be supported by further questions. That is, the background will be laid by subsequent questions.

Special Inquiry Officer: I will overrule the objection.

Examining Officer to Witness:

Q. How do you know that the respondent was a member of the Communist Party?

A. I saw him pay dues in the Gerlinger Building and I saw him leave the office.

[fol. 15] Q. That was the Communist Party office, you say?

A. That's right.

Q. To whom did he pay these dues?

A. James Murphy, or he might have paid them to Clayton Van Lydegraff. I am not positive.

Q. Who was James Murphy?

A. He was the secretary.

Q. Of what?

A. The Portland Section of the Communist Party.

Q. Did you see him pay dues on more than one occasion?

A. I am not certain.

Q. Did you ever see his Communist Party book and membership card?

A. Yes. It was there on the table.

Q. Now you have stated that you attended closed Communist Party meetings. Did you ever see the respondent, William Albert Mackie, at any of these meetings which you attended?

A. Yes, I did.

Q. Did he hold any office in the Communist Party, as far as you were aware?

A. To the best of my recollection, I think he was a functionary in the Albina Group. Secretary, I believe. I am not positive of that. That is my impression.

Q. Were you a member of the Albina Section at any time?

A. No, but I attended meetings of practically all the branches in my capacity as editor of the paper, and other things involved, if you want me to explain it.

Q. Did the respondent ever attend any meetings of the branch or section to which you belonged, either the Cultural Section or the Waterfront Section?

A. I don't remember. I don't believe sometimes the Waterfront Section was broad in scope to take in various other groups to take in some plan, but I can't say I ever saw him in the Waterfront Section.

Q. You stated that you were the editor of a newspaper known as the "Labor New Dealer"?

A. Yes.

Q. Who published or under what auspices was this paper published?

A. The Portland Industrial Council of the C.I.O. It was Communist set up and Communist controlled. That is they had a majority of the editorial staff and I carried out their decisions.

[fol. 16] Q. From whom did you receive your pay?

A. I received it from them. I don't think I got over $400 or $500 all the time I was there. I had other jobs besides.

Mr. Lezak: I move it be stricken as not responsive. He was asked who did he receive his pay from and he says I received it from them.

Special Inquiry Officer: I will sustain the objection.

Examining Officer to Witness:

Q. Will you state who—that is the name of the groups or the persons that paid you?

A. Well, James Fantz, who was president of the Portland Industrial Council, or secretary, I am not sure, but he was also an official of the Longshoremen's Union. He paid me and a chap by the name of George Kell, who was our business man. He paid me. I am not certain where the money came from because it came from so many different sources. It came from donations, orders from local unions. I think Bridges sent us some money sometimes.

Mr. Lezak: I move to strike all the last portion as to where the money came from as being not responsive. I think he has already answered the question.

Special Inquiry Officer: I will overrule the request because I think it is responsive to the question asked.

Mr. Lezak: Very well.

Examining Officer to Witness:

Q. You stated that you were expelled from the Communist Party. What ground were you expelled on?

A. Well, I turned in the letter of expulsion at the Bridges hearing. I don't know the exact wording. It was because of failure to keep certain disciplinary decisions that were made by the Control Commission. Also, for nonpayment of dues.

Q. Have you ever rejoined the Communist Party since the date of your expulsion?

A. No.

[fol. 17] Q. Then I take it that you are not now a member of the Communist Party.

A. No.

Q. Did you know the respondent, Mr. Mackie, personally?

A. Oh, yes.

Q. Did he ever come to your office, that is the office of the "Labor New Dealer" during your editorship?

A. Yes.

Q. Did you know him personally prior to your joining the Communist Party?

A. I met Mr. Mackie at open or semi-open Party functions and at dances and parties before I joined the Party and if I remember correctly, the Finnish Communist picnic at Astoria.

Q. Then there is no question in your mind concerning his identification as being the person that you saw at what you have called closed Communist Party meetings?

A. No, sir.

Q. Approximately how many meetings of the Communist Party did you see him?

A. I can't answer that exactly. I went to sometimes three meetings a week for about two years, and I know it was Mackie I saw at many. I can't say.

Q. More than one?

A. Oh, yes.

Q. Was this person that you have identified as Helmi Burns whom I believe you stated was your secretary, was she also a member of the Communist Party, to your knowledge?

A. Yes.

Q. When you met the respondent, William Albert Mackie at her home, did she make any remark to you as to his identity in the introduction?

Mr. Lezak: I certainly object to any question based on any remark that a third person made to him as to identification or any of the grounds that the Examining Officer is questioning about on the grounds it is pure hearsay.

Special Inquiry Officer: I will sustain that objection on the ground that the question was not too clear to me.

Examining Officer to Witness:

Q. I will restate the question. At the time you met the respondent, William Albert Mackie at the home of Helmi Burns, what was said in the introduction of the respondent to you?

[fol. 18] A. Well, I already had met Mr. Mackie, but we were discussing something about the circulation of the paper and various matters, Party matters. There wouldn't have been discussion in front of him if he weren't a Party member.

Mr. Lezak: I move to strike that last part of the answer as not being responsive to the question.

Special Inquiry Officer: I will overrule the objection on the ground that it is my opinion that it is responsive.

Mr. Lezak: I am referring particularly—the witness stated that certain matters would not have been discussed if he had not been a Party member.

Special Inquiry Officer: I believe that just further explains the preliminary part of that statement, so I will overrule that objection.

Examining Officer to Witness:

Q. Then as I understand it, the subject of discussion on this occasion was a Party matter. Is that correct?

A. That is right.

Mr. Lezak: I want to object to the question as being leading in the first place. In the second place, I want to object on the ground that it is improper to introduce evidence of any conversation such as this without some further identification as to what was said and that this whole question is directed merely to a conclusion. It is sort of a negative. It is something that concerns Party matters which would not have been discussed, according to Mr. Wilmot's testimony here.

Examining Officer: I think the explanation is in his first answer that they were discussing the circulation of the paper.

Special Inquiry Officer: I will overrule the objection.

[fol. 19] Examining Officer to Witness:

Q. At the time you were expelled from the Communist Party in 1939, was to your knowledge Mr. Mackie still a member of the Communist Party?

A. Yes.

Q. Did you ever attend any meetings of the Communist Party outside of the City of Portland at which time Mr. Mackie attended?

A. He attended one in Aberdeen.

Q. What kind of meeting was this?

A. It is what they called a plenum. It was merely a report of the work that was carried on. A plenum means a fullness, literally. It was to report work that was carried on by people in the Northwest.

Q. You stated earlier that Mr. Mackie had been to your office, that is the office of the "Labor New Dealer" on occasion. Is that correct?

A. Yes.

Q. For what reason would he come to your office? That is the office of the "Labor New Dealer"?

Mr. Lezak: I object to any testimony of the witness as to any reason. I think that the witness and the Examining Officer should be instructed that proper testimony should be what happened and what was said.

Special Inquiry Officer: I will sustain the objection.

Examining Officer to Witness:

Q. Was Mr. Mackie employed as a member of the staff on this newspaper?

A. No.

Q. Did he assist in the circulation of the newspaper?

A. Yes.

Q. Did he come to your office frequently in connection with the securing of papers for circulation?

A. Yes.

Q. Where was this paper circulated?

A. Well, all over the Portland area. Not much outside. Some went to Astoria, of course.

Q. Was it a paid position that he had in connection with the circulation?

A. I can't answer that. I believe there was some deal on circulation where you got a few cents, but I had nothing to do with that as to who paid him.

[fol. 20] Q. During the time when Mr. Mackie would come to your office with his duties in connection with circulation of the paper, was there any discussion as to the policies of the paper or as to the Communist Party's connection with the paper? You can answer yes or no.

Mr. Lezak: These questions are continually leading, suggesting the answers to the witness. I think he might ask him properly what occasion, what was said, what was done on any particular occasion. He asks him a blanket question covering any occasion, was this particular thing said or was this particular thing done. He hasn't identified the time of the occasion. He hasn't identified who was present at any of these conversations and he is attempting to direct his attention to a particular subject which he wants him to make an answer of yes or no about, and his own statement that he can answer yes or no is proof of that.

Special Inquiry Officer: I will sustain the objection.

Examining Officer to Witness:

Q. How frequently was the "Labor New Dealer" put out?

A. Every week.

Q. Did Mr. Mackie come to your office every week?

A. No, unless he came while I wasn't there.

Q. How frequently did he come to your office?

A. Once or twice a month. That's an average.

Q. Were there other matters not associated with circulation discussed?

A. Everything that dealt with the Party was discussed in that office. It was like a Branch Office of the Party Headquarters. As a matter of fact, that's what it was.

Q. Did anybody else occupy that office with you?

A. We had a back room that used to be used for a meeting hall, small meeting. Non-Communists exempt.

Mr. Lezak: Move to strike that last as being not responsive.

Special Inquiry Officer: I will overrule it.

[fol. 21] Examining Officer to Witness:

Q. Did Mr. Mackie take part in these discussions?

A. Yes.

Q. What was the subject matter of the discussions in which he took part?

A. General situation, what we were trying to do with our work in Portland, what we should do to broaden out the paper as a Communist organ.

Q. Then the discussions were, as I understand your answer, discussions of Communist Party policy?

Mr. Lezak: This is not the witness testifying. This is Mr. Fenn testifying again. I want to ask that the questions be confined as to what was said and what was done on a particular occasion. I don't want to keep repeating these objections.

Special Inquiry Officer: I will overrule that objection, since he is asking that question to clarify it.

Examining Officer to Witness:

Q. Could these meetings in the "Labor New Dealer" office be classed as Communist Party meetings?

Mr. Lezak: That is objected to as calling for a conclusion of the witness.

Special Inquiry Officer: I will overrule it because he was there and he should know what happened.

Witness: Of course they were.

Examining Officer to Witness:

Q. Did people other than employees of the paper and other than persons associated with the paper attend these meetings?

A. No.

Q. Did Mr. Mackie ever take part in any of the discussions at any of the meetings of the Communist Party that you ever attended with him?

A. Yes.

[fol. 22] Q. Did he to your knowledge ever officiate as chairman or whatever title was used at any of the meetings you attended?

A. No, sir. I don't think so.

Q. But he did take an active part?

A. That is right.

* * * * * * *

[fol. 25] Mr. Lezak to Witness:

Q. Did you ever find yourself refused admission to any meeting that you went to attend prior to your membership?

A. I never went to any closed meetings. Do you mean I went up and knocked on the door and they wouldn't let me in?

Q. Either that or any other refusal of yours to any admission of any meeting.

A. I was a long-time radical. I knew better than to try to crash a closed meeting.

Q. You never tried it and you were never refused admission. Is that right?

A. Yes.

Q. Now at those meetings you claim you saw Mr. Mackie?

A. Yes.

Q. How many times did you see him?

A. I am not sure how many times I saw him. I said that a few minutes ago.

[fol. 26] Q. Do you remember any specific meeting at which you saw him?

A. I can't remember a specific date. I worked 18 hours a day in those days.

Q. Can you remember any particular specific meeting about any specific subject where any speaker spoke? In other words, for example, if I ask you if you remember a specific baseball game at which Babe Ruth batted a home run. Do you remember any specific meeting?

A. Well, I remember at Aberdeen where Rappaport spoke for four hours.

Q. What was the purpose of that meeting?

A. You tell me and I will tell you. We used to get up there and everybody would get up and give a glowing account of what they had done. They were more or less fabricating, except they would report on their activity in various phases of the work, and always we would get the opening speech from Rappaport, and closing speech, and I know nothing to liken it to in America. I mean they want paper reports and anything like that. They had no agenda, except they took it by various areas and broke it down into people who spoke from there, and each one got up and told about what he had done. It was always linked with some big drive we had on in relation to promoting the Party in the lumber industry. This being a lumbering state, most of our activities were directed at that industry in that meeting. The longshoremen we didn't have to worry about. We had them.

Q. Was this an open meeting or a closed meeting in Aberdeen?

Special Inquiry Officer to Mr. Lezak:

Q. Are you referring to Aberdeen, Washington?

A. I am.

Witness:

A. Closed meetings.

Mr. Lezak to Witness:

Q. By a closed meeting I mean you come to a conclusion that only members of the Communist Party were admitted to that meeting.

A. Only card-packing members.

Q. Did you see anybody packing a card at that meeting?

A. I saw the people go in. It was a room taken in a hotel under some completely innocuous title like Forresters and the only way people could get in was by card.

Q. Did you see people showing a card at the door?

A. Yes, obviously.

[fol. 27] Q. Is that what you saw?

A. Yes.

Q. In other words, as each person walked in was there a credentials committee and the people took out a card and showed it to a person at the time at the door? Is that what you mean?

A. The person only flashed it at them. May I make this point clear, if you want to know, that these are the annointed people. When I showed up there or Mr. Mackie, they knew who we were.

Q. Then it is your contention that Mr. Mackie wasn't an ordinary Communist, but that he was one of the big wheels. Is that correct?

A. He belonged to what we call the top fraction.

Q. He was one of the top fraction in the Communist Party?

A. With the exception of what related to the waterfront activity.

Q. And at any of these open meetings do you remember any of those meetings—any of those specific meetings at which you saw Mr. Mackie at any open meetings before you became a member of the Communist Party?

A. I believe I saw Mr. Mackie at several dances here in Portland and mind you those were pretty tight affairs. I mean if anybody would bring you you had no trouble getting into those. No bystander from the street could run in. They ran a closer gate than that. You had to have somebody bring you.

Q. Let me call your attention back to this Aberdeen meeting. Do you specifically have a recollection right now

of having seen Mr. Mackie present a card at the door of that meeting upon entering?

A. No, I didn't see him present his card, but everybody in there had to present a card.

Q. You did not see him present a card.

A. No. I mean I don't recollect. I know that everybody had to have something to get in. It was pretty perfunctory in the case of people who were well known.

* * * * * * *

[fol. 31] Q. And during the time that you were the editor of the paper, you were attending, you said—and during the time you were a member of the Communist Party, you were attending about three or four meetings a week, I believe you testified. Is that correct?

A. That is correct.

Q. And you testified those were Communist meetings?

A. Yes.

Q. And some of those meetings were closed Communist meetings and some of those meetings were not closed?

A. I am referring specifically to closed. Two to three would be the average.

Q. You were attending two to three closed Communist Party meetings a week?

A. Yes.

Q. Where would those meetings take place?

A. Depending on the size, the Finnish Hall, and we used the Library under some innocent name. Those were usually pretty hush-hush meetings. We sometimes used the back office in the "Labor New Dealer", which small as it was we crowded enough in for a meeting, and at various homes around town.

Q. What specific discussion—do you remember any specific discussion that took place at any specific meeting that Mr. Mackie attended, other than this Aberdeen meeting?

A. No. I remember one occasion in the "Labor New Dealer" office which we discussed general policy of the moment.

Q. Do you remember what was said?

A. Not that long ago.

[fol. 32] Q. Do you remember any meeting at which Mr. Mackie attended in which an organized plot to accomplish

the overthrow of the Government of the United States by force and violence was discussed?

A. No.

Q. As a matter of fact, there were very few discussions of that kind in Portland during the depression. Is that correct?

A. Well, I don't think diabetics discuss diabetes every time they meet. We knew where we were going.

Q. Primarily your discussion was to do with the specific labor conditions, people on relief, and unemployment, and so forth and so on. That is the primary concern in those days?

A. Leading toward the revolution.

Q. Did you discuss ways and means of overthrowing the Government of the United States by force and violence at any of those meetings at which Mr. Mackie attended? You say you knew where you were going. Do you think Mr. Mackie knew where he was going?

A. I think Mr. Mackie knew where he was going.

Q. You just assume that because you know he was a member of the Communist Party. Is that right?

A. He wouldn't have been permitted in the meetings.

Q. In other words, the fact that he attended the meetings, you assume he knew. You never discussed—do you remember any discussion you had with Mr. Mackie?

A. I remember about the paper and its distribution.

Q. Was that, do you know, at your newspaper office?

A. Yes.

Q. Do you remember what was said and what was done at that particular occasion?

A. Well, it had to do largely with circulation. That was a great place for people to come and sit.

Q. A lot of people who were interested in the paper came and sat and talked about it. Is that correct?

A. Yes. Only Communists. I don't think I had three non-Communists. Everybody knew what it was. They didn't come there. Maybe some of the conservative boys would come in and give me the devil about it, but nobody came up to pay me any social calls that wasn't a Marxist.

[fol. 35] Q. How many Communists were there in Portland in late 1937?

A. I don't know exactly. It fluctuated. Membership changed constantly. People came in and dropped out.

Q. Well, were there more than a thousand?

A. I can't give a figure. There were hidden members. There were members that were generally known. There were members that I would say were in Portland—I would say less than a thousand, but it is astonishing how you would find out the people who were when you didn't believe they were.

Q. Would you say there were more than 500?

A. In Multnomah County?

Q. Yes.

A. I don't believe to my knowledge that there were over 300 or 400 active Party members.

Q. You don't know how many were hidden?

A. No, because I mean those are the ones definitely known.

Q. A number of the hidden, however, were known to you because you were a functionary.

A. I wasn't a functionary of the Party. I didn't say I was.

Q. I thought you said only functionaries attended this meeting at Aberdeen.

A. I believe I used the word top fraction members.

Q. By functionaries what do you mean? People who performed full time work for the Party and got paid?

A. Yes. I will say officials from now on. In a sense we were all functionaries.

* * * * * * * *

[fol. 36] Q. If I remember your testimony correctly, you never attended regularly at any function of the Albina Group of the Communist Party. You said there was a group known as the Albina Group. Did you ever attend regularly at their functions at all?

A. Yes, I did.

Q. Do you remember whether or not you attended there in the capacity of the editor of this paper or in some other capacity?

A. Usually something would come up on the paper and I would exhort people to get behind it.

. . . . . .

[fol. 45] Q. You testified that you saw him pay dues once. Is that correct?

A. I believe I saw him pay dues more than once. However, I specifically remember seeing him pay once.

Q. You specifically remember seeing him pay once. When and where was that?

A. I don't remember. It was in the Gerlinger Building.

Q. Who was present?

A. James Murphy, Clayton Van Lydegraff. I am not certain whether Harold Spring was there or not.

Q. Who was Harold Spring?

A. He was another functionary. I believe he became the section organizer.

Q. What was the procedure as far as paying dues is concerned?

A. We had a stamp and if I remember, right after I got in the Waterfront Branch and everything, why somebody used to pay my dues for me. They would come over there and collect them or something, but you have got stamps to put in. It is like the Elks or Moose or anything. One time there was an assessment for something they would dream up, and you paid an assessment for that. They were black books.

Q. Did you have your own book?

A. Yes.

Q. Did you go up and get your book marked when you paid?

A. I would get a stamp.

Q. Did you go to the Gerlinger Building?

A. Yes.

Q. Did all the Communist members go in there?

A. Some of them couldn't go in there.

[fol. 46] Q. Is there anything specific that happened on this particular day that makes you remember some 14 years ago that Mr. Mackie came in and who was present?

A. No, I just remember that.

Q. You said that his card was on the table. Did you read it?

A. No. He put the card down.
Q. What did you see?
A. I just saw the card.
Q. You saw him put a card down?
A. Yes.
Q. What else did you see?
A. Paid money.
Q. Do you know how much?
A. No, I don't recall how much he put down.
Q. What else was done?
A. He got the stamp and left.
Q. Did you see the card?
A. Yes.
Q. Could you read it?
A. No.

Q. Do you remember any conversation that you had with other people relative to Mr. Mackie?

A. Yes, I discussed Mackie with Kenneth Fitzgerald many times—a good loyal worker ar! hat not, and specifically when we went to this Finnish picnic in Astoria.

Q. Was that a Finnish picnic or Communist picnic?

A. It was in the Summer of 1936 before I joined the Party, but Fitz said I will get you in, and he was down there selling Red literature.

[fol. 47] Q. And this was a picnic and there were some people there who were Communists and who weren't and a number of people there who were potential converts. Is that correct?

A. All I know is he said it was a Party picnic and if I stayed with him he could get me into it.

Q. Were there people there who were not members of the Communist Party?

A. I don't know.

[fol. 48] Q. You have also testified that you have been arrested many times. Is that correct?

A. That's right.

Q. Have you been convicted?

A. If drunkenness is a crime, I was convicted, yes. Some consider it is an illness.

* * * * * * *

[fol. 49] Q. I am calling it an illness in deference to you. I am asking you whether you were laboring under that condition, let's put it that way, during the period of time you have been testifying as to the facts.

A. I drank a great deal, but I held three jobs, worked 16 [fol. 50] hours a day, and I would have been expelled if I drank to excess in the Party. I think my record of achievement shows I couldn't have been addicted. I drank an awful lot and so did the other boys. All the time I was in Portland all those years I think I was picked up once for being intoxicated in Portland and I was hotter than a nail on a cannon. I think that's why they picked me up. If you mean was I in an institution, I wasn't. I never missed a day's work. Yale University says it is something which has become a problem. Certainly it is a problem. When I was a kid of 17 I took a car out and didn't know my capacity, and I was not booked, in Portland, and I had 30 days in the work house on this one occasion, and I thought it was for smashing up a car, for drunken driving, and I checked since, and found out it was plain drunkenness. I don't know whether drunkenness was considered a crime. I always drank to excess. I will admit that, but I don't say I drank enough to—how could I hold a job?

* * * * * * *

[fol. 64] Q. Please state your full and correct name?

A. Lee Arthur Knipe.

Q. Where do you reside?

A. Rt. 1, Box 55, Hillsboro, Oregon.

Q. Are you presently employed?

A. No.

Q. Have you testified in previous cases for the Immigration Service?

A. I have.

Q. Where?

A. Here in Portland, San Francisco, Spokane, and Seattle.

Q. How many cases have you testified in?

A. I believe 6 or 7.

Q. Are you appearing in answer to a Subpoena?

A. I am.

Q. Where were you born?

A. Redding, Pennsylvania.

Q. Are you a citizen of the United States?

A. I am.

Q. Have you at any time been convicted of a felony?

A. At no time.

Q. Were you ever a member of the Communist Party?

A. I was.

Q. Will you state when you joined the Communist Party?

A. I joined in 1937, in I believe February of 1937.

[fol. 65] Q. Where did you join?

A. Portland.

Q. Are you now a member of the Communist Party?

A. No.

Q. When did you discontinue or drop out of membership in the Communist Party?

A. 1942.

Q. What was your reason for discontinuing membership in the Party?

A. I was expelled.

Q. Do you know what the basis for your expulsion was?

A. They charged me with associating with former members of the Communist Party who were no longer members and now classed as undesirables.

Q. Were you given an opportunity for explanation?

A. No.

Q. Have you at any time since your expulsion ever rejoined the Communist Party?

A. No.

Q. Are you a member of any organization at the present time?

A. Brotherhood of Railway Clerks.

Q. Is that a union?

A. Yes, a union.

Q. What is the condition of your health?

A. Due to ill health having a stroke, two strokes, I was compelled to retire from my position with the railroad company.

Q. Are you drawing disability or retirement pensions?

A. Partial disability and A. D. C. for my children.

Q. What is A. D. C.?

A. Aid to Dependent Children.

Q. At the time you joined the Communist Party, who solicited your membership?

A. John Stenson.

Q. To what branch or section did you belong?

A. Albina Branch.

Q. Did you remain a member of the Albina Branch during all your Communist Party membership?

A. I did.

Q. During the time you were a member of the Communist Party did you belong to any other organizations?

A. Oregon Workers Alliance.

[fol. 66] Q. When were you a member of the Oregon Workers Alliance?

A. I joined the Oregon Workers Alliance about three months previous to the Communist Party, about November of 1936.

Q. And did you remain a member of the Workers Alliance until your expulsion from the Communist Party?

A. I did.

Q. Did you hold an office in the Workers Alliance?

A. State Executive Secretary.

Q. To what local of the Workers Alliance did you belong?

A. Unity Local.

Q. During your period of membership in the Communist Party, did you hold any office?

A. Yes I was a member of the County Executive Board and also State Executive Board and Educational Director of my branch.

Q. Do you personally know the respondent in this case, Mr. Mackie?

A. I do.

Q. Is he in the room at the present time?

A. Yes.

Q. Will you point him out?

A. Yes. (Indicates Mr. Mackie.)

Q. Please state when you first met Mr. Mackie?

A. The first meeting I attended of the Communist Party in 1937.

Q. Where were the meetings held. Do you recall?

A. Finn Hall.

Q. What kind of meetings of the Communist Party were they?

A. The first meeting I attended was an open meeting. That was when I was solicited and asked to join and I signed an application and a week later I was told to be present at this meeting, which was a closed meeting, that second meeting for members only.

Q. You state Mr. Mackie was present at the first meeting. Is that correct?

A. I wouldn't swear to that, at the open meeting, but at the second meeting.

Q. Was this a closed meeting?

A. It was.

Q. Was Mr. Mackie to your knowledge, ever a member of the Albina Branch of the Communist Party?

A. Yes he was.

Q. Did he ever hold any office?

A. No, not to my knowledge.

[fol. 67] Q. Did you subsequent to this meeting that you have already told of, attend meetings of the Communist Party which were closed, af which time Mr. Mackie was present?

A. I did.

Q. Can you give an estimation as to the approximate number of closed Communist Party meetings that you attended that Mr. Mackie was present?

A. Once each week we met and Mr. Mackie was quite a good member and I would say he attended at least 30 to 35 meeting that I was at.

Q. Where were the meetings held as a rule?

A. Usually held in Finn Hall.

Q. Were they held in other places as well?

A. Yes they were held in different members' homes.

Q. Did you ever have meetings in your home?

A. I did.

Q. Did Mr. Mackie ever attend meetings in your home?

A. I believe two or three, I am not sure but he did attend about three that I am positive of.

Q. Do you remember any of the other homes that you met in?

A. We met in the home of John Stenson. I believe that was the only other place that we met.

Q. Was Mr. Mackie ever present at meetings held in John Stenson's home?

A. I can't remember.

Q. During the time that you were a member of the Communist Party did you pay dues to the Communist Party?

A. I did.

Q. Were you issued a membership book?

A. I was.

Q. How much did your dues consist of?

A. I was unemployed, but I think my dues were 10¢ a week or 10¢ a month.

Q. Did you pay dues up until the time you were expelled from the Communist Party?

A. Yes.

Q. What happened to the Communist Party book that you were given at the time you joined.

A. I don't know what happened to it. It got lost in a lot of literature that I had. I threw a lot away and burnt some of it and I have never been able to find it.

Q. Did Mr. Mackie take active part in the meetings of the Communist Party, that is the discussions?

A. Yes, quite active.

[fol. 68] Q. Did he at any time serve in any official capacity to your knowledge?

A. In the executive board of the branch but never held any official office.

Q. Was he to your knowledge ever a Communist Party functionary?

A. Yes, he was.

Q. In what connection was he a Communist Party functionary?

A. He was employed and his dues were at that time 25¢ a month. If you were employed you paid more dues. He kept his dues right up to date, in fact he even helped to pay mine.

Mr. Lezak: I move to strike, it's not responsive.

Special Inquiry Officer: I will sustain the objection.

Examining Officer to Witness Knipe:

Q. Did you understand the question?

A. I thought I did.

Q. The question was, was Mr. Mackie a paid Communist Party functionary. Was he paid by the Communist Party?

A. Not that I know of. I misinterpreted the question.

Q. Was he a Communist Party functionary to your knowledge?

A. No.

Special Inquiry Officer to Witness Knipe:

Q. By that you mean official of the Party?

A. No, he was not an official of the Party.

Examining Officer to Witness Knipe:

Q. What is your understanding Mr. Knipe as a functionary of the Party to be?

A. A functionary, to my knowledge is an active member who holds an office and whether it be paid or unpaid, there are paid functionaries in organizations and unpaid functionaries.

Examining Officer to Mr. Lezak: Does that cover it?

Mr. Lezak: That's fine.

Examining Officer to Witness Knipe:

Q. Was Mr. Mackie also a member of the Workers Alliance to your knowledge?

A. Not to my knowledge.

Q. I think you stated you were a member of the Unity Local of the Alliance. Is that correct?

A. Yes I was chairman of the Unity Local and also State Executive Secretary of the State organization of the Alliance.

[fol. 69] Q. Did Mr. Mackie ever attend meetings of the Unity Local of the Workers Alliance?

A. Not to my knowledge.

Q. Did he have any connection with the Workers Alliance as far as you know?

A. No direct connection. He attended some of our doings that we held, initiations and things of that sort. He came to these but not as a member.

Q. Who was the secretary of the Albina Branch during your period of membership?

A. Gretta Jessen.

Q. Did she collect dues from the various members of the Branch or subsections?

A. She did.

Q. Did you at any time ever see Mr. Mackie pay his dues?

A. I did.

Q. Did you ever see his Communist Party membership book?

A. I did.

Q. Explain in what way or how you were able to see the book?

A. He paid his dues and would hand the book to her and she would paste stamps in the dues stamp place or she would hand it to him to paste them in.

Q. Did you see it on more than one occasion?

A. Yes several times.

Q. What procedure was used in paying Communist Party dues. Were they always paid to the branch secretary or the section secretary or could they be paid to any representative of the Party?

A. I usually paid them to the secretary of the branch. However there were times and I couldn't attend meetings, and you could send them along with some member and they would pay it to the secretary.

Q. Could dues have been paid to someone like James Murphy?

A. They could, but I never remember of them having been paid to Murphy.

Q. What did you tell us your position was in the Communist Party?

A. Educational Director.

Q. As to your duties as educational director, what were you required to do?

A. I was to help teach the membership of the works of the Soviet Union and also to instruct them how to carry on the work in their organizations, other than the Party and

also how to conduct themselves at a Party meeting and to carry out the line of duties which were given to them, such as members of the Communist Party, like distributing literature and things of that sort.

Q. Have you ever held any classes?

A. Not outside the branch. We used to have a period each meeting night for about a half hour that we took up the study of these text books that I referred to and then we would have a discussion and I would assign a few questions for them to speak on for the next meeting, and which I would call on them to answer.

[fol. 70] Q. Did Mr. Mackie ever participate in these classes or periods of instruction that you had in this Branch?

A. No more than other members did.

Q. Have you attended Communist Party schools during your period of membership?

A. Yes.

Q. Where were these schools held?

A. Finn Hall.

Q. How many schools did you attend?

A. Two.

Q. What was the duration of the schools, more than a day or less?

A. One in Finn Hall ran about 10 days and then one while in Seattle, just two days.

Q. Was Mr. Mackie present at either of the schools you attended?

A. No.

Q. Did Mr. Mackie ever help you distribute literature that was part of your duty to distribute as educational director?

A. No.

Q. Did he at any time ever serve under your direction as a helper, literature worker in the Communist Party?

A. No.

Q. Was Mr. Mackie employed at the time you knew him during your period of membership in the Communist Party?

A. Yes.

Q. Where was he working?

A. I do not know.

Q. What type of work did he do to your knowledge?

A. I couldn't say for sure. I thought that he was working on some kind of lumber job, but I am not positive of that, I couldn't say for sure.

Q. Did you ever attend any Communist Party conventions?

A. Yes.

Q. Was Mr. Mackie ever present at these convention or conventions to your knowledge?

A. No. I don't think so.

Q. Did you have any personal association with Mr. Mackie during the period of time which you testified that you belonged to the Party?

A. Yes.

Q. There is no doubt in your mind as to the person who is present here this afternoon, Mr. William Albert Mackie, as being Bill Mackie, to whom you referred to in your testimony?

A. Absolutely not.

[fol. 71] Examining Officer: No further questions.

Mr. Lezak to Witness Knipe:

Q. When did you last see Mr. Mackie?

A. 1941.

* * * * * * *

Q. In 1941 was he a member of the Communist Party, to your knowledge, or had he left the Party earlier?

A. I don't know if he was a member at that time as he moved away, he was working outside of Portland.

Q. Do you know where he worked?

A. I couldn't say for sure, I heard in Idaho at an unknown place.

* * * * * * *

Q. Do you specifically remember as to whether or not he attended any meetings of any branch of the Communist Party in 1942?

A. No.

Q. You remember that he did not?

A. I remember that he did not.

Q. In 1941 do you remember whether he attended any meetings of the branch?

A. He did not.

Q. Did he in 1942?

A. He did not.

. . . . . .

[fol. 72] Q. Did the Albina Branch at that time actively plot and plan any armed overthrow of the Government of the United States which Mr. Mackie was present? By that I mean was there any discussion as to any immediate use of armed force to overthrow the Government of the United States during the time that you were present in the branch?

A. No discussion of armed force other than everything was to do with leading up to a revolution.

Q. Leading to an eventual revolt?

A. Yes.

Q. Did Mr. Mackie in your presence ever advocate the overthrow of the Government by force and violence or the use of illegal means?

A. No he never did.

Q. Would you say, to your knowledge, that Mr. Mackie was one of those people who were more particularly interested or concerned with the problems that faced the country during the depression such as unemployment and relief.

A. I think very much interested. I think he took into consideration the sufferings of the people in the depression and was very sympathetic toward their welfare.

. . . . . .

[fol. 73] Q. Now Mr. Knipe with reference to these meetings that took place at Pina Hall, you say that these meetings were closed meetings, and by that what do you mean?

A. Only that members of the branch were admitted to these meetings.

Q. Who determined who was a member of the Branch?

A. We only had about 25 or 35 members and everyone was known by others and if one was expelled in between meeting nights the branch would have been notified that such a party had been expelled and wouldn't admit him to any of the meetings.

. . . . . .

[fol. 75] Q. Was he what you would call one of the Party intellectuals?

A. What do you mean by that?

Q. Was he very much on theory, political discussion?

A. No.

Q. He was more interested in bread and butter topics of the day, what to do for unemployment and relief?

A. I would say so, yes.

Q. Was most of the activities of the Albina Branch towards these specific problems?

A. Yes they were.

. . . . . .

[fol. 83] Examining Officer to Witness Knipe:

Q. During the period of your membership in the Communist Party was the question ever discussed at Party meetings as to what answer would be given by the members holding party membership if questioned by the police or other public authorities?

A. It was.

. . . . . .

Examining Officer to Witness Knipe:

Q. What advice was given?

A. As educational director of the branch I had instructions to ask all members of the branch to never carry their dues book in case they were ever arrested or picked up to deny it, that there was no possible way that they could be [fol. 84] proved members of the Communist Party without that dues book.

Q. Was that instruction given to all members of the Albina Branch to your knowledge?

A. To my knowledge I was told by the chairman to so instruct the membership of the meetings when they attended. It was given out to every branch in the State of Oregon and it was carried out I believe that some branches instructed their members to say that they were members of a progressive political organization, the Progressive Party. But as far as our branch was concerned we did not bring out Progressive Party, we just asked them to deny

that they were ever members of the Communist Party and there was no way it could be proved without that book.

* * * * * * *

[fol. 85] Hearing resumed 10:00 A.M. May 21, 1953, with the same persons being present, Guido F. Caramella, Stenographer.

* * * * * * *

[fol. 93] Mr. Lezak to Witness Knipe:

Q. As I gather the substance of your testimony and I am just giving this as a memory refresher and I am asking you whether or not it is correct and you can correct me if I am misquoting you in any way. You understand that?

A. Yes.

Q. You saw Mr. Mackie at a number of meetings that you claim were closed meetings of the Communist Party; that he was not a functionary of the Party; that you yourself taught members the works of the Soviet Union as the educational chairman of that group, but that Mr. Mackie did not participate in any of the discussions that you held in that connection; that Mr. Mackie did not distribute literature and that Mr. Mackie never served under your direction in any capacity and that as near as you know Mackie never attended any Communist Party conventions. Is that correct?

A. Yes. That's right. I would like to correct you on something. You referred to me as educational chairman. I was educational director.

Q. But that is a correct summary of your testimony as far as I went. Is that correct?

A. Yes. That's right.

Q. At how many meetings did you see Mr. Mackie?

A. He attended regular each week. I would say from about a year and a half at least. A year and a half.

Q. Were dues paid at these meetings by everyone attending at each week's meeting?

A. Not at each week meeting.

[fol. 94] Q. Once a month?

A. Yes.

Q. Was there one monthly meeting at which dues were paid?

A. You could pay them at any time.

Q That is during any meeting dues could be paid?

A. Yes.

Q. Did you see each of the persons attending these meetings pay dues?

A. Yes.

Q. At each time that each of these persons paid dues did they present a book of some sort to the person who received their dues?

A. Yes.

. . . . . .

[fol. 95] Mr. Lezak to Witness Knipe:

Q. If you don't understand this question you tell me that you don't understand before you answer it. I don't want there to be any other confusion about this. Did you see each of the members or people who attended those meetings pay dues for the Albina Branch of the Communist Party? Did you see each of these people pay dues?

A. Yes when I was present. And if they paid dues at the time that I was present, I would say that I saw them pay their dues.

Q. Did all of these people who were present at those meetings pay dues at sometime or other to your knowledge?

A. Yes.

. . . . . .

[fol. 128] Hearing resumed at 1:10 P.M. June 29, 1953, the same persons being present.

. . . . . .

COLLOQUY

Examining Officer: It is my understanding that Mr. Mackie does not wish to testify concerning allegations made by the Government on charges contained in the warrant of arrest as well as the testimony given by the witnesses. Is that correct?

Mr. Lezak: That is my understanding.

Special Inquiry Officer: So that there may be no misunderstanding on the part of counsel or on the part of respondent, at this time I wish to state for the record that a deportation proceeding is not a criminal action. It is civil in its nature. An alien may not refuse to answer questions

properly asked by an Immigration officer designed to ascertain whether such an alien is subject to deportation. In the last reported decision of which I am aware, being Interim [fol. 129] Decision No. 427, decided by the Board of Immigration Appeals on March 18, 1953, in the *Matter of K.*; the Board stated: "Where there is a duty to speak, silence is evidence of a most persuasive character." In that decision, the Board quoted that case of United States ex rel. Bilokumsky v. Todd (263 U. S. 149). In that case the Board found that it was the duty of the respondent to speak and his silence was without legal justification. And they viewed silence in that case as evidence.

Mr. Lezak: May I state that I am aware of the quoting of that decision and that I have advised Mr. Mackie as to his rights in that regard.

Special Inquiry Officer to Respondent:

Q. Do you understand what I have just stated for the record, Mr. Mackie?

A. I don't quite understand what it all means, no.

Q. It means just simply this. Two Government witnesses who have appeared here have testified that they have seen you at closed meetings of the Communist Party. There has been no evidence to refute those statements and since you have refused to testify, it will have to be assumed that the statements made by those two witnesses are correct, since it has not been refuted.

Mr. Lezak: I am advising Mr. Mackie at this time that he need make no further statements without consulting his attorney first.

Special Inquiry Officer: Do you have any further testimony or evidence to offer at this time, Mr. Lezak?

Mr. Lezak: May we be excused for one moment? I realize this is somewhat irregular, but my client has a question.

(Mr. Lezak and Mr. Mackie leave the room for approximately five minutes.)

Mr. Lezak: After consultation with my client, I have nothing further to offer.

. . . . . .

[fol. 128a]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
Portland, Oregon

File: A-5 085301

In re: Willia Niukkanen alias William Niukkanen, now known as William Albert Mackie

In Deportation Proceedings

In Behalf of Respondent: Sidney I. Lezak, Attorney at Law, Pacific Building, Portland 4, Oregon

Charges:

Warrant: Act of 1918—Member of Communist Party of the United States

Lodged: None

Application: None

Detention Status: Released under $1000 bond March 24, 1953.

Warrant of Arrest Served: September 12, 1952.

OPINION—June 30, 1953

Discussion: This record relates to a 44-year-old married male, a native and citizen of Finland, who was born at Wiipuri, Finland, on November 24, 1908. He entered the United States for permanent residence at Sault Ste. Marie, Michigan, on September 5, 1909, and appears to have since resided uninterruptedly in the United States. That entry has been verified.

Two witnesses, native-born citizens of the United States, both ex-members of the Communist Party, testified for the Government that they attended meetings with the respondent, which meetings were restricted to members of the Communist Party. The evidence presented in behalf of

the Government relative to the respondent's membership in such party has not been refuted.

The first witness, Walter Robert Patrick Wilmot, presently a script and novel writer in New York City, who was a resident in Portland, Oregon, from 1934 to 1944 testified that he joined the Cultural Section of the Communist Party in Portland, Oregon, during the latter part of 1936 or early part of 1937 and thereafter assigned to the Waterfront Section of said party at about the time he became editor of a trade-union newspaper in about September, 1937. He remained a member of the Party and Waterfront Section until his expulsion from the Party in about July or August, 1939. During the period of his membership and up until about six or seven months prior [fol. 128b] to his expulsion he was very active in the Party, attending two to three closed meetings weekly, including the Albina Section of the Party, of which the respondent was a member from at least the first part of 1937 and up until sometime in 1939. Wilmot did not testify that he ever observed the respondent as being present at a meeting of the Albina Section.

Wilmot testified that he first met the respondent in about the summer of 1936, or prior to the time that he (Wilmot) joined the Party, which he recalls as having been at a Finnish picnic at Astoria, Oregon, sponsored by the Communist Party but apparently not limited to members of the Party. After Wilmot joined the party he again met the respondent in the home of a Mrs. Helmi Burns, also then a member of the Party, who was engaged in secretarial work in Wilmot's newspaper office, at which time matters pertaining to the Party were discussed which would not have been discussed in the presence of the respondent had he not been a known member. He also asserted that he saw the respondent pay Party dues in the office of the Portland Section of the Communist Party located in the Gerlinger Building, Portland, Oregon, for which he was given stamps which the respondent affixed in his membership book.

Wilmot also related that Mackie came to the office of the newspaper, the "Labor New Dealer" (which Wilmot edited) once or twice a month to obtain copies of the paper for

distribution, which was published weekly. He alleged that the said newspaper was a "Communist set-up and Communist controlled" in that the major portion of the members of the editorial staff were Communists known to him as such and that he carried out their policies. In connection with the respondent's visits to such office, the witness testified that frequent meetings were held in a back room at which members of the Communist Party were present and discussions had in reference to the policies of the party and the circulation of the newspaper as an organ of the Communist Party, in which discussions the respondent took an active part.

In addition, Wilmot also testified that he attended a meeting in Aberdeen, Washington, at which the respondent was present, which he referred to as a "plenum", i. e., a meeting which was held for the purpose of reporting the activities carried on within the Party in certain areas of the Northwest, which was also restricted to members of the Communist Party. This witness also stated that the respondent was still a member of the Communist Party at the time that he ceased attending meetings.

In response to a question by respondent's counsel to the witness Wilmot, reading as follows "Did you discuss ways [fol. 128c] and means of overthrowing the Government of the United States by force and violence at any of those meetings at which Mr. Mackie attended? You say you knew where you were going. Do you think Mr. Mackie knew where he was going?" the following answer was given: "I think Mr. Mackie knew where he was going." (p. 32).

The witness Wilmot at all times responded to questions without hesitation, was at all times able to grasp the meaning of the questions asked and found it unnecessary to cogitate, which would in itself be a strong indication that he knew the facts about which he was testifying. He has a keen intellect. Although he and the respondent do not appear to have been intimate friends they were fairly well acquainted with each other from their associations as comrades in the Communist Party. The testimony of this witness is regarded as credible. He has admitted that he has drank to excess (p. 50) but not to the extent that it has impaired his mental faculties or means of livelihood.

The second witness, Lee Arthur Knipe, testified that he joined the Communist Party in about February, 1937, in Portland, Oregon, and was expelled in September or October, 1942, for associations with former members of the Party who for that reason were regarded as undesirables. During the period of membership of this witness he was a member of a group known as the "Albina Section" (Note: It is apparent the group adopted the name by reason of location in the Albina District of the City of Portland). This witness testified that the respondent was present at the first closed meeting of the Communist Party attended by the witness and that thereafter he attended from about 30 to 35 meetings with the alien, restricted to members of the Party, two or three of which were held in the home of the witness. This witness was educational director of the section of which he was a member. He also testified that he saw the respondent pay his Communist Party dues to the secretary of the branch or section and affix the stamps received therefor in his membership book. He last attended a meeting with the respondent in about 1939, after which the respondent was dropped from membership for non-payment of dues on orders received from one James Murphy, then secretary of the Communist Party in Portland, Oregon. He also related that there were from 30 to 35 members in the Albina Branch of the Party during the period of his membership and that for that reason they were all acquainted with each other.

Knipe further testified that he and the respondent were close friends, not only having attended Communist Party meetings together but that he has visited in the home of the respondent's parents, where the respondent lived. He did not testify that the respondent's parents were members of the Party.

[fol. 128d] The witness Knipe on cross-examination was reluctant in giving testimony about an arrest and conviction in California in 1930 on a forgery charge which resulted in a minor penalty. Counsel attempted to impeach the credibility of this witness on such ground. However, that is a matter extraneous to the issues involved here and the reason for his reluctancy to testify in reference thereto was later adequately explained (pp. 87-88). There is

no reason to doubt the veracity of the witness Knipe in reference to his associations with the respondent in meetings restricted to members of the Communist Party.

Five witnesses were presented by the respondent, who may be classified as character witnesses since neither has ever been labeled as a member of the Communist Party and consequently neither has any knowledge of the facts. Therefore, their testimony need only be briefly discussed.

J. Rinta, past pastor of a Finnish church in Portland, Oregon, met the respondent in 1944, at which time he officiated at the respondent's marriage. He has never visited in the home of the respondent, the respondent has never been a member of his church, there has been no close acquaintanceship and they have never discussed political issues.

George Wayne Jackson, an employee of the Oregon State Fish Commission, met the respondent in 1943, or prior to the respondent's marriage, at which time he was courting his spouse who at that time was then renting a room from this witness. After the respondent's marriage he has gone fishing and hunting with the respondent, they have visited together in their homes but at no time has there been any discussion in reference to respondent's attitude toward Communism or other political matters.

The respondent's wife, Irene Mackie, testified that she was married to the respondent on June 24, 1944. She has a son, 11 years of age, born to a prior marriage, who also resides with the respondent. She testified that at no time has the respondent ever discussed with her matters relating to the Communist Party. Even after the respondent was arrested on September 12, 1952, under deportation proceedings she has not questioned him about the matter nor has he volunteered information in respect thereto nor denied that he had been a member of the Communist Party.

Marguerite Jensen, testified that she has been a neighbor and acquainted with the respondent for the past nineteen years. She also testified that she has never heard the respondent discuss politics or other matters which would indicate to her one way or the other his attitude toward Communism.

[fol. 128e] Lillian Marian Mackie, a sister of the respondent, a practical nurse, three years younger than the respondent, testified that she has never discussed the matter of Communism with her brother, or other political matters nor has she even as much as attended any function at the Finnish Hall in Portland, Oregon, where the Albina Section of the Communist Party also held meetings, which is located within the Albina District and not too far distant from the place where she has resided, which in itself seems unusual since she is of Finnish extraction, lives in what is regarded as a neighborhood of Finnish people and such hall has been a recreation center. As has been observed and as she has testified, the respondent is a reticent individual.

There are favorable factors. The respondent has lived in the United States since he was less than one year of age. He had 95 days service in the U. S. Army, having been drafted in 1944 and discharged for physical reasons. He is married to an alleged native-born citizen of the United States. However, these matters have nothing to do with the removal of the alien from a deportable class as specified by law. Both he and counsel were informed as to his privilege of submitting an application for suspension of deportation under Section 244(a)(5) of the Immigration and Nationality Act on May 21, 1953 (p. 96). No such application has been submitted and at the resumed hearing had on June 29, 1953, the respondent elected to not further testify. Therefore, the testimony as given by the witnesses for the Government must be regarded as substantial and probative. As pointed out *In the Matter of K.*, Interim Decision #427, decided by the Board of Immigration Appeals on March 18, 1953, where there is a duty to speak, silence is evidence of the most persuasive character (*United States ex rel. Bilokumsky* v. *Tod*, 263 U.S. 149). So that there would be no misunderstanding, counsel and the respondent were duly advised as to the quoted decisions. Therefore, it is found that in the instant case where there is a duty to speak and his silence in reference to membership in the Communist Party as related by Government witnesses that his silence is considered as evidence. No attempt will be made to speculate in this decision as to

the reason why he has taken the position which he has. It is found, therefore, that the charge as contained in the warrant of arrest is sustained from the evidence in the record.

The respondent did not elect to specify a country to which he desires to be deported, if it is so ordered.

Findings of Fact: Upon the basis of all the evidence presented, it is found:

fol. 128f | (1) That the respondent is an alien, a native and citizen of Finland;

(2) That the respondent last entered the United States at the Port of Sault Ste. Marie, Michigan, on September 5, 1909;

(3) That the respondent was a voluntary member of the Communist Party of the United States during the years 1937, 1938 and 1939.

Conclusion of Law: Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under the Act of October 16, 1918, as amended, the respondent has been, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

Order: It is ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest.

Louis C. Hafferman, Special Inquiry Officer.

[fol. 128g]

U. S. Department of Justice

Board of Immigration Appeals

File: A-5085301—Seattle

In re: Willia Niukkanen or William Niukkanen, now known as William Albert Mackie

In Deportation Proceedings

In Behalf of Respondent: No one

Charges:

Warrant: Act of 1918—Member of Communist Party of the United States

Lodged: None

Application: Termination of proceedings

Detention Status: Released under $1,000 bond

Warrant of Arrest Served: September 12, 1952

Opinion—September 8, 1953

This is an appeal from the order of the special inquiry officer requiring the respondent's deportation on the ground stated above. The respondent contends that the evidence of record is insufficient to establish deportability and that the statute under which the charge has been laid is unconstitutional.

The evidence of record is fully discussed in the order of the special inquiry officer and need not be repeated. Respondent did not testify.

Briefly, the record establishes that the respondent is a native and citizen of Finland, who entered the United States in 1909, and was a voluntary member of the Communist Party of the United States from 1937 to 1939. To establish Communist Party membership, the Government produced two witnesses who each testified that they had seen the respondent pay Communist Party dues. The record reveals that Goverment witness Knipe testified untruthfully in this proceeding and perhaps others concern-

ing his record of convictions. While his credibility is weakened by this incident, his testimony as to the respondent's membership in the Communist Party is corroborated by another Government witness whose credibility is unimpeached; and the fact remains, that the respondent has [fol. 128h] not denied the correctness of Knipe's testimony concerning membership in the Communist Party. Even using his testimony in an accumulative sense only, we find the record establishes the ground of deportability by reasonable, substantial and probative evidence.

Questions as to the constitutionality of the law are outside the scope of this Board's authority (*Matter of L-*, Int. Dec. 334). The appeal will be dismissed.

Order: It is ordered that the appeal be and the same is hereby dismissed.

Leigh L. (Illegible), Acting Chairman.

[fol. 128i]

U. S. Department of Justice

Board of Immigration Appeals

File: A-5085301—Seattle

In the Matter of

Willia Niukkanen or William Niukkanen or William Albert Mackie

---

In Deportation Proceedings

In Behalf of Respondent: Sidney L. Lezak, Esquire, 1130 S.W. Third Avenue, Portland 4, Oregon.

Deportable: Act of 1918—Member of Communist Party of the United States.

Motion to Reopen Proceedings.

Opinion—November 29, 1954

The alien's appeal from the order of the special inquiry officer requiring his deportation was dismissed by this Board on September 8, 1953. We found that the record

established that the respondent had been a voluntary member of the Communist Party of the United States from 1937 to 1939. Respondent did not testify on the issue of membership in the Communist Party. He was given an opportunity to apply for discretionary relief, but did not do so. This motion is now made for reopening of proceedings to enable the respondent to apply for suspension of deportation. Accompanying the motion is an affidavit from the respondent outlining the hardship which his deportation would cause his family and stating that he is loyal to the constitution of the United States and to the principles of democracy. There is no expressed disavowal of membership in a subversive organization within the past ten years nor has evidence of such a nature been presented. We have previously decided that under such circumstances, a motion to reopen should not be granted (*Matter of P-*, Int. Dec. 598). This motion will be denied.

Order: It is ordered that the motion be and the same is hereby denied.

Thos. G. Finucane, Chairman.

[fol. 128j]

U. S. Department of Justice

Board of Immigration Appeals

File: A-5085301—Seattle

In the Matter of

Willia Niukkanen or William Niukkanen or William Albert Mackie

---

In Deportation Proceedings

In Behalf of Respondent: Nels Peterson, Esquire, 901 Loyalty Building, Portland 4, Oregon.

Opinion—December 23, 1954

This case comes forward pursuant to counsel's motion dated December 9, 1954, requesting the withdrawal of the outstanding order and warrant of deportation and further

requesting that the hearing be reopened for the purpose of affording the respondent an opportunity to apply for and prosecute an application for suspension of deportation under the provisions of section 244(a)(5) of the Immigration and Nationality Act of 1952.

The respondent, a 45-year-old married male, native and citizen of Finland, has resided continuously in the United States since his admission for permanent residence when he was one year of age at Sault Ste. Marie, Michigan on September 5, 1909. The remaining facts in this case have been heretofore fully covered and need no further discussion herein.

Attached to counsel's motion are several documents, the contents of which are self-explanatory and need not be discussed further herein. The respondent in an affidavit subscribed and sworn to on December 9, 1954 deposes that he has not been a member of any subversive organization within the past 10 years and in support thereof further deposed that he was a member of four organizations during this period that have never been linked with any subversive or proscribed organizations.

Upon full consideration of all the evidence of record and counsel's representations by brief on motion as well as the documents submitted in support thereof, we will direct that the outstanding order and warrant of deportation be withdrawn and the hearing reopened for the purpose of affording the respondent an opportunity to apply for and prosecute an application for suspension of deportation under section 244(a)(5) of the Immigration and Nationality Act of 1952. Accordingly, the following order will be entered.

[fol. 128k] Order: It is ordered that the outstanding order and warrant of deportation be withdrawn and the hearing reopened for the purposes set forth in the foregoing opinion.

Thos. G. Finucane, Chairman.

[fol. 132]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
Portland 5, Oregon

File: A-5 085 301

TRANSCRIPT OF REOPENED HEARING

Date:	February 2, 1955
Time:	9:30 AM
Place:	Portland, Oregon
Special Inquiry Officer:	Louis C. Hafferman
Examining Officer:	John W. Wilson
Stenographer:	Leona L. Brown
Respondent:	William Albert Mackie
Alien's Representative:	Nels Peterson, Attorney at Law
Language Used:	English

[fol. 184] Counsel to Respondent:

Q. Now, Mr. Mackie, you have been sworn. You understand that any false statement you make is punishable under the laws of the United States. You understand that?

A. Yes.

[fol. 199] Q. Now did you know a man whose name is Lee Knipe?

A. Yes.

Q. When did you first ever see him?

A. Well, it is hard to say when I first saw him. I saw him a lot of times during depression days, but I can't tell you when I first met him.

Q. Approximately how many times did you see him?

A. Maybe 150 times. I don't know.

Q. Was he identified as far as you knew in any partic-

ular capacity as any officer or superior or official of any organization or group?

A. Well, I don't remember. I don't really know.

* * * * * * *

[fol. 200] Q. Do you know whether or not he had anything to do as an officer in the Unemployed Federation?

A. I don't know that.

Q. Do you know whether or not he had anything to do with the Workers Alliance?

A. Yes.

Q. What did he have to do with that?

A. Well, that's where I saw him. I don't know whether you call it Unemployed Council or Workers Alliance or what, but we used to get together and hold dances and raise funds and help get relief for different people in town, and I met him many times. That's how I got acquainted with him from the Unemployed—

Q. In the Finnish Hall or anywhere else did you attend Communist Party meetings?

A. Well, if I said yes and if I said no maybe I wouldn't be telling the truth, because I really couldn't tell one way or the other. I went to meetings there. Sometimes maybe they were Communist, and maybe they wasn't. It could have been and maybe they wasn't.

Q. Did you know then or do you know now whether Lee Knipe was a member of the Communist Party or had any office in the Communist Party, either one?

A. Well, it is hard to say. I don't know, but I am not sure of that. I don't want to make a definite statement.

Q. Don't you know as you sit there in the witness chair now, or have you ever known? Answer either way.

A. Known what?

Q. That Lee Knipe was a member of the Communist Party?

A. I don't know. No, I don't know that.

Q. Have you ever known whether he was or was not?

A. Well, in those days things went around and around and you get one man belonged to the Communist Party and

somebody else—a person didn't know whether they did or didn't. It is hard to say.

Q. Did your know a man by the name of Walter Robert Patrick Wilmot?

A. No, I didn't.

Q. You heard a Walter Robert Patrick Wilmot testify in this proceeding, did you not?

A. Yes.

Q. Can you say on your oath whether or not you have seen that man before?

A. I never saw the man in my life and I don't think he ever saw me in his life.

* * * * * * *

[fol. 201] Q. Now, Mr. Mackie, you at the time of the deportation proceedings brought against you, did not take the witness stand to testify in your own behalf. Now would you explain why?

A. Well, the main reason was on account of the witnesses. I figured I won't have a chance if I said yes or if I said no or what I said when the man gets on the witness stand against me, a man I don't even know, and I know he has never seen me in his life, gets up there and lies against me. What chance would I have? That was the main reason I didn't say anything.

Q. Now Mr. Mackie, Mr. Hafferman wants me to inquire, I assume, as to your knowledge or understanding of the Communist movement. Will you tell us what your understanding of the Communist movement is?

A. I wouldn't want to even try to explain it. I don't know.

Q. Have you read any books written by Karl Marx?

A. Not that I can remember.

Q. Have you read any books on Socialism?

A. I am a very poor reader. I don't read too much. My reading mostly concerns sport magazines, outdoor life, and I never did read much on the political side of things.

[fol. 202] Q. Do you read the daily newspapers?

A. Yes.

Q. In Portland, Oregon?
A. Yes.
Q. Do you subscribe to any?
A. Journal, yes.
Q. Do you subscribe to both of them?
A. Yes.
Q. Have you ever read the book entitled "Looking Backward" by Edward Bellamy?
A. No, I haven't.
Q. Have you ever read any books by Friedrich Engels?
A. No.
Q. Joseph Stalin?
A. No.
Q. Lenin?
A. No, I don't think so.

. . . . . .

[fol. 203] Q. Have you ever paid any money to any organization, the Communist Party of Oregon or the United States, or any similar name?
A. I haven't knowingly.
[fol. 204] Q. Have you been a member of the Communist Party of the United States or any branch or affiliate or organization by that name or any similar name?
A. Knowingly, I haven't, no.

. . . . . .

[fol. 206] Q. Do you know where the ulcer is located?
A. Right here in the stomach.
Q. A duodenal ulcer?
A. Yes.
Q. Have you ever been under the care of a doctor for that condition?
A. The doctor was taking x-rays and he found out accidentally. This doctor happened to run on to it. He said it was in a position you couldn't hardly catch it with an x-ray. I was on a diet there for several months and it helped me out some, but it didn't cure it.
Q. Do you know whether or not there has ever been a perforation of it?
A. It bleeds.

Q. Do you vomit blood?

A. Not lately, but sometimes when I get up in the morning I spit blood.

. . . . . .

[fol. 207] Hearing resumed 9:15 A.M. Feb. 3, 1955, the same persons present with the exception of stenographer Guido F. Caramella substituting for Leona L. Brown.

. . . . . .

[fol. 240] Examining Officer to Respondent:

. . . . . .

Q. Do you believe that membership in the Communist Party now is a lawful political purpose?

A. No. I can't answer questions about that because I don't know. If Congress says it is unlawful, it is unlawful. If it isn't, it isn't. I don't know. If I got the question right, I don't know.

Q. I am not trying to confuse you, Mr. Mackie. I am trying to find out your feelings toward Communism.

A. Naturally I don't—Communism or socialism, I don't care what party it is here or any place else, if it has anything to do with overthrowing the government by force and violence I don't agree with it, no.

Q. What do you understand as the aims of World Communism?

A. Oh, I can't go into that because I don't know anything about it. I can go on and talk and talk and hash it out and probably won't say nothing in two hours.

. . . . . .

[fol. 240a]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
Portland, Oregon

File: A-5085301

In re: Willia Niukkanen alias William Niukkanen, now known as William Albert Mackie

In Deportation Proceedings

In Behalf of Respondent: Mr. Nels Peterson, Attorney at Law, Loyalty Building, Portland 4, Oregon

Charges:

Warrant: Act of 1918—Member of Communist Party of the United States after entry

Lodged: None

Application: Suspension of deportation under Sec. 244 (a)(5), I&N Act.

Detention Status: Released under $2000 court bond pending disposition of petition for writ of habeas corpus

Warrant of Arrest Served: September 12, 1952

OPINION—February 16, 1955

Discussion: The record relates to a 46-year-old married male, a native and citizen of Finland, who has resided continuously within the United States since his admission for permanent residence at Sault Ste. Marie, Michigan, on September 5, 1909. He was found deportable on the charge contained in the warrant of arrest, as above set forth, in an order dated June 30, 1953. His appeal therefrom was dismissed by the Board of Immigration Appeals in its order of September 28, 1953. A motion to reopen the proceedings, when deportation was imminent, to file an application for suspension of deportation was filed on December 10, 1954, and granted December 23, 1954. A prior motion to reopen was denied on November 29, 1954, ap-

parently on the ground that there had been no disavowal of membership in a subversive organization for the past ten years.

The findings of fact and conclusion of law as set forth in the decision of June 30, 1953, will not be disturbed, nor is there any reason for so doing. It has been administratively held that an alien who has been found deportable under the Act of October 16, 1918, as amended, by reason of having been a member of the Communist Party of the United States after entry may apply for suspension of deportation under Section 244(a)(5), Immigration and [fol. 240b] Nationality Act, such ground for deportation under the prior law having been carried over into the 1952 Act. *In the Matter of D-*, Int. Dec. #641, BIA 8/27/54.

The alien was lawfully married to a native-born citizen of the United States on June 24, 1945. There are no children as the issue of such marriage. His spouse has a son by a former marriage, aged 12 years, a native-born citizen. Her prior marriage was lawfully terminated by divorce on November 22, 1944. The child being his stepson may be regarded as his child also under Section 101(b)(1)(B), Immigration and Nationality Act, and will for that reason hereafter be so referred to. The alien in his application (Ex. 7) also lists his parents, aged about 78 and 80 years, as persons who would be affected should he be deported. Both are natives of Finland, they having accompanied him to this country and have not acquired United States citizenship. Although the father did not testify in these proceedings, his mother did and her testimony shows that at the most his deportation may result in an emotional or mental stress, which it is doubtful could be regarded as being of an unusual and extreme hardship. Inasmuch as they have their own income and are not financially dependent for support upon him they will be disregarded insofar as the application is concerned.

The applicant for the past few years has been employed as a painter. His earnings for the past year amounted to about $4000, which he has estimated has been his average yearly income over a period of about ten years. His wife is not presently employed. During the time they have been married she has worked off and on for a total of about

30 months as a waitress and laundry worker. The alien has not been employed for the past few weeks, which could be attributed to the season of the year. They purchased a home in 1946 for $5100, which presently is valued at between $6000 and $6500 and on which there is an outstanding mortgage of about $2500. The value of their home furnishings and personal property, including an automobile, is estimated at about $2000. They have no other assets.

The evidence of record shows that the respondent has lived uninterruptedly within the United States for a period in excess of the last ten years; that he has not been arrested and or convicted of an offense which would adversely affect good moral character since 1930, at which time he was convicted of having stolen four chickens, which may be regarded as a petty offense. Witnesses have been produced, not related to the alien, citizens of the United States, who have known him during the statutory period for which good moral character is required, who testified that he has been regarded as a person of good repute and moral character. Their testimony in this respect is regarded as credible. Although a final order of deportation in this case had [fol. 240c] been entered, it was not issued on a charge contained in the Immigration and Nationality Act. On the basis of the record it has been satisfactorily established that the alien's deportation would result in exceptional and extremely unusual hardship to him, his spouse and child, the latter two citizens of the United States.

Whether or not the relief sought should be granted is an administrative discretionary matter. If the application is granted a complete and detailed statement of the facts and pertinent provisions of the law in the case must be reported to the Congress with the reasons for such suspension in accordance with Section 244(c), Immigration and Nationality Act. The Senate and the House must by resolution favor the suspension of deportation, otherwise the alien must be deported.

In the instant case there are factors which merit consideration and because thereof the respondent was informed of the provisions of Section 244(a)(5) at the proceedings had in 1953. The fact that he did not then avail himself of the benefits provided in the statute and his refusal to tes-

tify at that time will not be held in any way to jeopardize the pending application. It was believed at that time that he made a mistake, but it was a matter that he himself had to decide. The only matters which will be now considered are those which may in any way affect the application on the basis of the reopened proceedings, for which the hearing was reopened, and determine therefrom whether suspension of deportation is justified.

The alien has lived within the United States since the age of ten months or for the past forty-five years. He had service in the U. S. Army for three months in 1941, or prior to the time the United States declared war on December 8, 1941, was transferred to the Inactive Enlisted Reserve Corps, was recalled for three days in February, 1942, and transferred to the Enlisted Reserve Corps and was discharged without further duty on June 8, 1945, his honorable discharge certificate showing that he was separated for "convenience of the Government". There has been no arrest in his case of a serious nature. In addition to his spouse, his child and parents he has two sisters in this country. Should he depart from the United States he would not be eligible to return under Section 212(a)(28), Immigration and Nationality Act.

The demeanor of the alien at the 1953 proceedings and at these proceedings to determine his eligibility for suspension of deportation leaves no doubt that he was a voluntary member of the Communist Party during at least the years 1937-1939. There is no evidence in the record to indicate that he has been a member of the Communist Party after he left Portland in about 1939 for Eastern Oregon. At the reopened hearing the alien was evasive as to his activities during the period between 1930 and 1940, particularly as to whether or not he had been a member of the Communist Party (pp. 195-204).

[fol. 240d] On direct examination by counsel for alien, the respondent testified (p. 200):

> "Q. In the Finnish Hall or anywhere else did you attend Communist Party meetings?
>
> A. Well, if I said yes and if I said no maybe I wouldn't be telling the truth, because I really couldn't

tell one way or the other. I went to meetings there. Sometimes maybe they were Communist, and maybe they wasn't. It could have been and maybe they wasn't."

At page 204 on direct examination the following testimony appears:

"Q. Have you been a member of the Communist Party of the United States or any branch or affiliate or organization by that name of similar name?

A. Knowingly, I haven't, no.

Q. Any time in your lifetime, from the time you were born until today (as) you are sitting in the witness stand:

A. Not knowingly."

When an alien is deportable on a so-called subversive charge, it has been the policy if he is otherwise statutorily eligible not to grant suspension of deportation unless it has been established that he has made a clean break with the Communist Party or any organization which may be subversive in nature, that he is no longer sympathetic to the Communist principles and is in fact actively opposed to the Communist ideologies. In the instant case the respondent is what may be well described as a reticent individual as to his beliefs. This conclusion is borne out not only by his demeanor during the proceedings but by the testimony of his own witnesses, including his wife. *In the Matter of R-*, Int. Dec. #644, BIA 9, 10 54, an appeal from an order denying suspension of deportation was dismissed as the evidence of record in that case did not establish that the appellant was no longer sympathetic to Communist principles, he having terminated his membership in 1935 in the Communist Party. In the instant case it is somewhat questionable whether he has ever to any extent perceived the intricate machinations of the Communist Party and principles of communism. He may be regarded as a follower and not a leader. Although there is no doubt that the respondent was in fact a member of the Communist Party, he is not going to admit that he was disillusioned. His attitude is fairly well expressed in his own words when he was questioned by the Examining Officer for the Govern-

ment as to recent activities or connections with two organizations, whose aims or activities are questionable, especially as to what persons were present at a certain meeting (pp. 217-218), the testimony being as follows:

> "Q. Do you recall who was there?
>
> A. Do I have to answer that? (Inquires of counsel). I don't want to come out here and give a lot of names and you go and inquire about it, and make a person think I am trying to act as a "stool pigeon". That is one thing I don't want to do.".

[fol. 240e] If he has made a clean break with the Communist Party, there is no reason why he should be any more reluctant to testify about activities within the Party or any questionable organization than he would be to furnish information while a boy scout, his employment or any other bona fide activity. It is apparent that the alien has been and is going to be extremely careful so as to avoid giving testimony which could result in the implication of some other person who may to him be known as a member or former member of the Communist Party so as to avoid being labeled a "stool pigeon", nor is going to give testimony which would indicate or infer that he has been disillusioned or is opposed to Communism. The witnesses presented by him in no way appear to have ever had any connection with what may be regarded as a subversive organization and each one, including his wife, has testified that he has never discussed matters which may be regarded as political.

It is significant to note that after the respondent was found deportable that he turned for aid and comfort to an organization known as the Oregon Committee for the Protection of Foreign Born. Whether such organization is in any way linked with the American Committee for the Protection of Foreign Born, which has been cited by the Attorney General as disloyal, has not been established in these proceedings. The purpose of the former organization is questionable. He has also completed and submitted an application for membership in the Methodist Federation for Social Action. The latter organization has been re-

ferred to by the California Senate Committee on Un-American Activities in its report for 1948 at page 73 as one of the more conspicuous fronts for Communist activity in the field of relief, assistance and welfare work, and dealing with problems of the unemployed and underprivileged.

What the alien intended to accomplish by turning to either organization as referred to above for solace when he was represented by able counsel is somewhat difficult to understand. He has alleged, however, that at the meetings which he has attended discussions were had about attempting to repeal the Immigration and Nationality Act, which he denounces although he seeks relief thereunder.

It is also worthy of note that the alien testified that he could not recall the name of any person other than the witness Knippe with whom he attended any meeting during the 1930-1940 era. He had no difficulty in recalling the name of his scout master between 1921 and 1928 (p. 195). His testimony shows he has always while in Portland, Oregon, lived in that area of the city within which the Finnish Hall and the Albina District are located.

The alien's testimony that he does not recall or denial [fol. 240f] of membership in the Communist Party is not credible. His attitude being what it is, the case does not merit the granting of suspension of deportation. His application therefor will be denied.

Order: It Is Ordered that the alien's application for suspension of deportation be denied.

It Is Further Ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest.

Louis C. Hafferman, Special Inquiry Officer.

[fol. 240g]

U. S. Department of Justice

Board of Immigration Appeals

File: A-5085301

In re: Willia Niukkanen or William Niukkanen now known as William Albert Mackie

In Deportation Proceedings

In Behalf of Respondent: Nels Peterson, Esquire, Loyalty Building, Portland 4, Oregon

Charges:

Warrant: Act of 1918—Member of Communist Party of the United States after entry

Lodged: None

Application: Suspension of deportation Section 244(a)(5), I&N Act

Detention Status: Released under $2000 bond

Opinion—May 13, 1955

This case comes forward on appeal from an order entered by the Special Inquiry Officer on February 16, 1955, denying the respondent's application requesting that his deportation be suspended under the provisions of Section 244(a)(5), Immigration and Nationality Act of 1952, and directing that he be deported from the United States pursuant to law on the charge stated in the warrant of arrest. On examination of the record we find that the warrant for the respondent's arrest was issued and served upon him on June 17 and September 12, 1952, respectively.

This case first came before this Board on September 8, 1953, at which time we dismissed the appeal from an order entered by the Special Inquiry Officer on June 30, 1953, directing that respondent be deported from the United States pursuant to law on the charge stated in the warrant of arrest.

Thereafter, on November 29, 1954, we denied counsel's motion requesting that the proceedings be reopened for the purpose of affording respondent an opportunity to apply for suspension of deportation under the Immigration and Nationality Act of 1952. In our decision of November 29, 1954, we affirmed our previous finding that respondent had been a voluntary member of the Communist Party of the United States from 1937 to 1939 and commented that he did not testify on the issue of membership in the Communist Party during the hearing conducted on the warrant of arrest.

[fol. 240h] When this case was last before us on December 23, 1954, we directed the withdrawal of the outstanding order and warrant of deportation and further directed that the hearing be reopened for the purpose of affording respondent an opportunity to apply for and prosecute an application for suspension of deportation under the provisions of Section 244(a)(5) of the Immigration and Nationality Act of 1952.

Respondent, a 46-year-old married male, native and citizen of Finland, has resided continuously in the United States since his admission for permanent residence at Sault Ste. Marie, Michigan, on September 5, 1909. Respondent was lawfully married to a native-born citizen of the United States on June 24, 1945, at Portland, Oregon.

During the hearings conducted under the warrant of arrest on May 11 and May 21, 1953, two Government witnesses testified that the respondent was a voluntary member of the Communist Party of the United States from 1937 to 1939. These witnesses each testified that they had seen the respondent pay Communist Party dues. Likewise, testimony of the witness Wilmot revealed that the respondent attended closed meetings of the Communist Party in Portland, Oregon, and in Aberdeen, Washington. The record shows that the other Government witness Knipe testified untruthfully during the aforementioned hearing concerning his record of convictions, thereby lessening his credibility as a witness. However, testimony of the witness Knipe as to respondent's membership in the Communist Party, Portland Section, is corroborated by the Government wit-

ness Wilmot, who has been a credible and truthworthy witness in this proceeding.

The respondent did not testify during the aforementioned hearings on the issue of whether he had or had not been a member of the Communist Party of the United States. During the original hearings he was afforded an opportunity to make applications for discretionary relief but failed to do so. The evidence of record clearly establishes that respondent is subject to deportation on the charge stated in the warrant issued for his arrest on June 17, 1952.

The respondent testified during the reopened hearings conducted at Portland, Oregon, on February 2 and 3, 1955, that he was a member of the Workers Alliance for approximately two years prior to his departure for Eastern Oregon during the year 1939. The Workers Alliance is an organization noted in the list prepared by the Attorney General, after appropriate investigation and determination, as a Communist Party affiliate. It was so designated as such on May 27, 1948, and the information with respect thereto was disseminated on June 1, 1948 (13 F.R. 3067). [fol. 240i] The respondent's citizen wife and his mother testified during the reopened hearing that they had never known or heard respondent talk about or discuss Communism. It is conceded that his deportation would result in serious economic detriment to his citizen spouse and her minor citizen child, issue of a prior marriage. Likewise, it is conceded that no evidence has been produced to show that the respondent has been a member of the Communist Party since leaving Portland, Oregon, for Eastern Oregon, during the year 1939. However, his testimony during the reopened hearing was evasive and unresponsive with respect to his activities both prior and subsequent to 1949. Under the applicable regulations the respondent has the burden of establishing that he meets the statutory requirements for the relief of suspension of deportation (8 CFR 242.54(d)).

Respondent testified that he attended meetings in the Finnish hall in the Albina section of Portland, Oregon, but did not know whether they were Communist Party meetings or not and that perhaps there were Communists

present at these meetings. When asked if there were Communists present, he answered "Maybe there were Communists there and maybe there wasn't." Notwithstanding the testimony of the two witnesses who appeared on behalf of the Government during the original hearing conducted under the warrant of arrest, and his own testimony in this proceeding that he was a member of the Workers Alliance, the respondent testified that he had never knowingly been a member of the Communist Party of the United States or of any branch, affiliate or organization of the Communist Party of the United States. He further testified that he did not knowingly at any time in his life become a member or affiliated with the Communist Party of the United States. When asked if he recalled who was present at the Turkey dinner meeting of the Oregon Committee for the Protection of the Foreign Born, held in the Finn hall in November 1954, he answered, "Do I have to answer that? * * * And make a person think I'm trying to act as a stool pigeon. That is one thing I don't want to do."

The remaining facts in this case have been heretofore fully covered by the Special Inquiry Officer and need no further discussion herein.

Counsel's assertion that there is no legal, reasonable or proper grounds for the Special Inquiry Officer's denial of respondent's application requesting that his deportation be suspended under the provisions of Section 244(a)(5) of the Immigration and Nationality Act of 1952, is without merit. The evidence of record clearly establishes that the respondent was a member of the Communist Party from 1937 until his departure from Portland, Oregon, to Eastern Oregon in 1939. During the reopened hearing he testified that he was a member of a group that was probably the Workers Alliance, an organization designated by the Attorney General of the United States as being Communist. [fol. 240j] As hereinbefore stated, the respondent's testimony during the reopened hearing was evasive and unresponsive to most, if not all, of the questions asked of him with respect to the Communist Party and his being a member thereof. He refused to name the six, eight or maybe ten persons that were present at the Turkey Dinner meeting of the Oregon Committee for the Protection of Foreign

Born held at the Finnish hall in November 1954. While it has not been established that this latter organization is Communist or an affiliate of the Communist Party, the respondent steadfastly refused to name the persons that were present at that meeting. Likewise, the respondent failed to submit any evidence showing that he is actively opposed to the doctrines and teachings of the Communist Party. While the respondent's answers to questions concerning his activities both prior and subsequent to 1940 as well as the meetings attended by him are for the most part vague and unresponsive, it is noted that his recollection of places, persons and events prior to 1930 is good.

After carefully considering all the evidence of record together with the exceptions noted by counsel on appeal, we find nothing therein that warrants any change being made in the decision of the Special Inquiry Officer who has denied respondent's application requesting that his deportation be suspended under the provisions of Section 244(a)(5), Immigration and Nationality Act, and has directed that he be deported from the United States pursuant to law on the charge stated in the warrant of arrest. The evidence of record, which is based primarily upon the testimony of the respondent, does not establish that he, the respondent, has completely severed his connection with the Communist Party of the United States and that he is no longer sympathetic to its aims or principles. There is an overwhelming amount of evidence to show that respondent was a member of the Communist Party of the United States from 1937 until early in the year 1939. There is nothing in the record to show that respondent has completely disassociated himself with the Communist Party and that he no longer believes in its doctrines or principles. For the reasons hereinbefore set forth, the following order will be entered.

Order: It is ordered that the appeal be dismissed.

Thos. G. Finucane, Chairman.

{fol. 240k}

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

File: A-5085301—Portland, Oregon

In re: Willia Niukkanen aka William Niukkanen now known as William Albert Mackie

In Deportation Proceedings

Motion

On Behalf of Respondent: Gerald H. Robinson, Esquire, Failing Building, Portland 4, Oregon, and Nels Peterson, Esquire, 901 Loyalty Building, Portland 4, Oregon

Charges:

Warrant: Act of October 16, 1918, as amended (former 8 USC 137)—Member of the Communist Party of the United States after entry.

Lodged: None.

Application: Reopening

OPINION—March 26, 1958

On September 8, 1953 this Board dismissed the appeal from a special inquiry officer's order of June 30, 1953 directing the respondent's deportation from the United States pursuant to law on the charge stated in the warrant of arrest. On November 29, 1954 we denied a motion for reopening of the proceedings to afford the respondent an opportunity to apply for suspension of deportation under the Immigration and Nationality Act of 1952, but on December 23, 1954 we ordered the outstanding order and warrant of deportation in the case withdrawn and the proceedings reopened to afford the respondent an opportunity to apply for and prosecute an application for suspension of deportation under Section 244(a)(5) of the Immigration {fol. 240l} and Nationality Act (8 USC 1254). On May 13, 1955 we dismissed the appeal from a special inquiry officer's order of February 16, 1955 denying the respondent's application for suspension of deportation under Section

244(a)(5), and directing that he be deported from the United States pursuant to law on the charge stated in the warrant of arrest. The case is now again before us on motion for reopening of the proceedings for reconsideration of the issue of deportability. The motion will be denied.

The respondent is a 49-year-old male alien, a native and citizen of Finland, who has resided continuously in the United States since his admission for permanent residence at Sault Ste. Marie, Michigan, on September 5, 1909. He was lawfully married to a native-born citizen of the United States on June 24, 1945, at Portland, Oregon. He has a minor stepson who is a native-born citizen of the United States.

The respondent stands ordered deported on the basis of a finding that he was a member of the Communist Party of the United States from 1937 to 1939. The present motion is based on a decision of the Supreme Court of the United States in the case of *Roicoldt* v. *Perfetto* (355 U.S. 115; 2 L. Ed. (2d) 140), rendered on December 9, 1957, which was subsequent to the entry of the last order in this case. The claim is that said decision redefines the evidential and substantial requirements of membership in the Communist Party as a basis of deportability, so as to take the respondent out of the class of deportable aliens.

At the original hearings, two former members of the Communist Party testified that they knew the respondent as a member of that Party from 1937 to 1939. One of the witnesses testified that the respondent was a card-carrying and dues-paying member of the Communist Party and a functionary (secretary, he believed) of the Albina Group. He also testified that he had attended a Communist Party meeting called a plenum, in Aberdeen, where the respondent was present; and that this meeting was to report work done by the people of the Northwest. He further testified that the respondent had attended meetings in which everything that dealt with the Party was discussed, including policy, and that the respondent took part in these discussions. He finally testified that in his opinion the respondent was not an ordinary Communist but a high official in the Party. [fol. 240m] The second Government witness' credibility was lessened because of his untruthful testimony as to his

record of convictions, but his testimony was corroborated by the first Government witness. He likewise testified that he had seen the respondent pay Communist Party dues. He also testified that he attended 30 to 35 closed Communist Party meetings with the respondent. He also testified that the respondent served on the executive board of the branch of the Party of which the witness was a member.

The respondent did not testify at the original hearings, the ones at which the witnesses referred to above testified. However, he did testify in the course of the hearings reopened for the purpose of taking testimony on his application for suspension of deportation. He admitted attending meetings in the Finnish hall in the Albina section of Portland, Oregon, but claimed ignorance as to whether they were Communist Party meetings. He also testified that he was a member of the Workers Alliance, an organization designated by the Attorney General of the United States as being a Communist organization. His testimony was evasive and unresponsive to most, if not all, of the questions asked with respect to his membership in the Communist Party. In addition, his answers to questions concerning his activities both prior and subsequent to 1940, as well as to the meetings attended by him, were vague and unresponsive, but his recollection of places, persons and events prior to 1930 was good.

Careful reconsideration of the entire record reveals an overwhelming amount of evidence showing that the respondent was a member of the Communist Party of the United States from 1937 until early in the year 1939, and that such membership on his part was a meaningful association and one which was not wholly devoid of political implications. But this is the precise test for deportability laid down by the Supreme Court in the case of *Bouoldt* v. *Perfetto* (supra). In addition, eight days after considering that case, the Supreme Court refused to review the deportation case of this respondent. (*Niukkanen* v. *Boyd*, cert. den., 12 16 57; 2 L. Ed. (2d) 259.) Accordingly, the present motion will be denied.

[fol. 240n] Order: It is ordered that the motion be and the same is hereby denied.

Thos. G. Finucane, Chairman.